

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-131118-12

Date:

January 07, 2013

LEGEND

X =

Y =

A =

B =

C =

Date 1 =

Date 2 =

Date 3 =

State =

Dear :

This responds to a letter dated March 16, 2012, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations made, X was incorporated on Date 1, under the laws of State. Effective Date 1, X elected to be taxed as an S corporation. Effective Date 2, X elected to treat Y as a Qualified Subchapter S Subsidiary (QSub). On Date 3, X issued shares to A, a partnership. A is an ineligible S corporation shareholder. Upon being informed that A is an ineligible S corporation shareholder, (1) X cancelled the stock issued to A, and (2) X reissued the stock to B and C.

X represents that the termination of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X represents that B and C are eligible S corporation shareholders and have filed all relevant tax returns consistently with X being an S corporation and Y being a QSub. Further, X represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year. Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in §1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination

occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation is treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 3 and thereafter, provided X's S corporation election is valid and is not otherwise terminated under § 1362(d). Furthermore, Y will be treated as a QSub effective Date 2 and thereafter, provided Y otherwise is eligible to be treated as a QSub.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether X is a valid S corporation, or whether Y is eligible to be a QSub.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: